IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 5790 OF 2004

Shri Manoj Dattatraya Mestry ...Applicant.

V/s

The Maharashtra State Financial Corporation Mumbai (Konkan Regional Office) & Ors. ...Respondents.

Mr. M.R. Deshpande for the applicant.
None for respondent Noa.1 and 3.
Mr. A.M. Shringarpure, APP for the State.

CORAM: V.M.KANADE,J.
DATE : 19th April, 2005.

P.C.

1. Heard the learned Counsel for the applicant.

2. Applicant is challenging the issuance of process by the Additional Chief Metropolitan Magistrate , 33rd Court, Ballard Pier, Mumbai on a complaint filed by respondent No.1 under section 109, 406, 420 read with section 34 of the Indian Penal Code.

3. It is the case of the complainant that the loan was given to the applicant herein and various equipments which were purchased by the applicant were given as security. It is the case of the complainant in the complaint that all these equipments were shown to have been burnt in the fire. It is alleged that the applicant had, therefore, tried to remove the

equipments which were given as security. In the complaint, various circumstances are given to show that the applicant herein had tried to cheat the complainant. On this complaint being filed, process was issued by the Trial Court.

4. It is submitted by the learned Counsel appearing for the applicant that the dispute in question is a civil dispute and, therefore, process ought not to have been issued on the said complaint. It is submitted that the Metropolitan Magistrate has issued process without any application of mind.

5. It is not possible to accept the submission made by the learned counsel for the applicant. From the perusal of the complaint and the averments made in the complaint, it can be seen that prima facie case has been made out by the complainant for issuance of the process. It is, however, open for the applicant to move the Trial Court for discharge under section 245 of the Criminal Procedure Code at an appropriate stage. All questions raised in this application are kept open and will be decided by the Trial Court if an application under section 245 is filed by the present applicant. With these directions, Criminal Application is dismissed.

6. Leave to amend.

V.M. KANADE, J.